

Guidance for Completing Background Investigations on Contractors who will have Contact with Indian Children in I.H.S. Facilities

I. Purpose

The purpose of this Guidance is to implement the Indian Child Protection and Family Violence Prevention Act, P.L. 101-630, and Section 231 of the Crime Control Act, P.L. 101-647. This Guidance should be used as a guide for processing the necessary paperwork for conducting Background Investigations on contractors who will have contact with Indian children in Indian Health Service facilities. This Guidance also specifies the responsibility of the Procurement Official, Contractor, Contracting Officer, Direct Site Monitor, and Service Unit Director in ensuring compliance in completion of the Background Investigations. It is not intended to supersede nor replace existing laws, regulations, or departmental circulars.

II. Instructions for Processing the Temporary Waiver of Character Investigation

The “Temporary Waiver of Character Investigation” (for Government contractors only) form was developed by the Aberdeen Area Contracting Branch and adopted by Bemidji Area to allow the contractor to proceed with contract services involving contact with Indian Children prior to completion of the CNACI (Childcare Worker National Agency Check with Written Inquiries) investigation. Following are the instructions for completion of the waiver form:

1. **Attachment A** is a copy of the “Temporary Waiver of Character Investigation form. The form is dated 12/17/97.
2. The Statement of Work shall clearly identify duties that involve contact with Indian children. The Service Unit Director is responsible for identifying those positions which shall have contact with Indian children and Background Investigations shall only be conducted on those identified contract personnel.
3. The “Temporary Waiver of Character Investigation” form shall be included as an attachment to all Request for Quotations (RFQ) and Request for Proposals (RFP). The offerors/bidders shall be instructed in the RFQ or RFP as follows:

“In order to be determined acceptable, your offer/bid must include a completed “Temporary Waiver of Character Investigation” form. If offeror/bidder fails to complete and return the form, your offer will be rejected as unacceptable.”
4. The “Temporary Waiver of Character Investigation” form is only to be used for waiver of the background investigation of Government contractors and does not apply in the hiring of civil service employees.
5. The Service Unit procurement official is responsible for completion of the temporary waiver and inclusion of the waiver in the procurement file.
6. The Purchase Order (PHS-347 form) shall make the following statement under “Item 17”:

“The contractor must perform in accordance with Section 231 of the Crime Control Act of 1990, P.L. 101-647 and the Indian Child Protection and Family Violence Prevention Act, P.L. 101-630, and failure to comply with these statutes will result in immediate removal.
7. The Service Unit Director (SUD) is responsible to ensure that direct sight monitoring is enforced. He/she must also identify the individuals responsible for direct sight monitoring of the contractor. The SUD must ensure that the direct sight monitor has completed a CNACI and must require them

to sign the waiver form. Several employees may sign the form if required. Responsibilities of the Direct Sight Monitor shall include but are not limited to the following:

- A. The Direct Sight Monitor shall be responsible for ensuring that the contractor will not have unmonitored contact with an Indian child.
 - B. The Direct Sight Monitor shall be responsible for monitoring the contractor at all times while the contractor is in regular contact with or has control over an Indian child in the Indian Health Service facility. This means that the contractor shall be within the **sight** of the Direct Sight Monitor.
 - C. If the situation should arise that the Direct Sight Monitor is called away or must leave the sight of the contractor while in the examination of a child, the Direct Sight Monitor may instruct the Contractor that they shall leave the room and not remain in contact with the child until another Direct Sight Monitor is assigned or they return.
8. The SUD, Contractor, and Direct Sight Monitors must sign the waiver before the Contracting Officer signs the Purchase Order.
 9. Please be advised that the Procurement Official is responsible for ensuring the completion of all documents necessary to complete the background investigation. Following is a list of the required forms:
 - Temporary Waiver of Character Investigation
 - Declaration of Federal Employment (P.L. 101-630)
 - Optional Form 306 (Declaration for Federal Employment)
 - Standard Form 87 (Finger Print Form)
 - Standard Form 85 (Revised September 1995) **Previous editions are unusable.**
 10. The contractor is responsible for completing and submitting forms required for the CNACI investigation and the temporary waiver does not excuse any failure or delay in completing the paperwork for the background investigation.

III. Instructions for Competing the Declaration for Federal Employment Form:

1. Attachment B is a copy of the "Declaration for Federal Employment" form.
2. The "Declaration for Federal Employment" shall be attached to the Request for Quotations (RFQ) and Request for Proposal (RFP) when it is determined that the acquisition will involve procuring a service from a contractor who will have contact with Indian children in an IHS facility.
3. Each RFQ and RFP shall contain the following statement in the instructions for submitting an offer or bid:

"In order to be determined acceptable, the offeror/bidder shall complete and return the 'Declaration for Federal Employment' form. If offeror fails to complete the 'Declaration for Federal Employment' form, the offer/bid will be rejected as unacceptable."
4. The Procurement Official shall review the offer/bid packages submitted and determine whether they have completed all the required forms including the "Declaration for Federal Employment". If the offeror/bidder has failed to submit the Declaration they shall be determined unacceptable and rejected from the procurement.
5. If the offeror/bidder has marked "YES" on either of the two questions on the "Declaration for Federal Employment", do not proceed with an award of a contract. This is an indication that the offeror/bidder has been arrested or charged with a crime which may disqualify them from a federal contract which involves contact with Indian children.

- a. The Procurement Official is responsible for taking immediate action by referring the questionable Declaration, offer/bid and supporting documentation to the Aberdeen Area Contracting Officer for further investigation.
 - b. The Aberdeen Area Contracting Officer will coordinate with the Personnel Adjudication official to determine whether the offeror/bidder is suitable for performing a contract that involves contact with Indian children.
 - c. The Aberdeen Area Contracting Officer will inform the Service Unit Procurement Official of the determination. If the offeror is determined to be non-suitable for the contract, the procurement official is responsible for taking immediate action to disqualify the offeror from the procurement. The bidder/offeror shall be notified immediately in writing of the decision.
6. If the offeror/bidder has marked "NO" on both questions on the "Declaration for Federal Employment", the procurement official shall file the document in the procurement file and proceed with the procurement process or award a contract.

IV. Instructions for completing the Optional Form 306, SF 87 (Finger Print Form), and SF 85 (Revised September 1995)

The above described forms are required for completion of the background check (CNACI) required by P.L. 101-630 and P.L. 101-647. The CNACI will include criminal history background check, fingerprint check through the Identification Division of the Federal Bureau of Investigation, and inquiries to state and tribal law enforcement agencies.

1. The Service Unit is responsible for all cost associated with completing the CNACI investigation on a contractor. The program shall identify, on the requisition, the "CAN #" to be charged for the CNACI.
2. The Service Unit Director is responsible for identifying those contracts and contractors who will have contact with Indian children. The Statement of Work shall contain a clear statement describing the duties that involve contact with Indian children.
3. Following the award of a contract, the contractor shall be responsible for completing the background check forms. The procurement official is responsible for assisting the contractor to complete the following forms:
 - Optional Form 306 (Declaration for Federal Employment)
 - Standard Form 87 (Finger Print Forms)
 - Standard Form 85 (Questionnaire for non-sensitive positions Revised September 1995) – Previous editions are unusable

A statement shall be included on the RFQ or RFP which informs the offerors/bidders that they will be required to complete the above described background investigation forms if they win the contract:

"The successful offeror/bidder shall be required to complete the following background investigation forms: OF 306, SF 87 finger print forms, and SF 85. "

4. A "Temporary Waiver for Federal Employment" shall not be issued until the contractor has completed the background investigation forms and delivered them to the procurement official.
5. The Service Unit Procurement Official shall clearly mark and mail the completed background investigation forms to the attention of:

Procurement Clerk
Branch of Contracting
Aberdeen Area Indian Health Service
309 Federal Building
Aberdeen, SD 57401

Envelope shall be marked: "**Background Investigation Forms**"

6. The Aberdeen Area Personnel Service Branch is responsible for receiving the completed background investigation forms. They will review the forms and return incomplete or inaccurate forms to the Contracting Branch for further action.
7. If it comes to the Procurement Official's attention that the contractor has failed to or improperly completed the forms necessary for the background investigation as identified in Section (v) subsection 3, the contractor will be informed immediately. If the contractor again fails to complete the forms, they shall be given an unsatisfactory performance rating. The unsatisfactory performance rating shall be considered if the contractor competes for future contracts.

V. Pro-Child (P.L. 101-630 and 101-647)

The Aberdeen Area Indian Health Service has formed a workgroup consisting of representatives from Personnel, Contracting, and the Service Units. The workgroup has issued Guidance on how to properly handle Background Investigations.

The workgroup has encountered the following issue:

It requires 4 to 6 months to complete a CNACI investigation on a single contractor or employee. In most cases the need for the services of a physician or medical care worker are immediate and a 6 month delay would unduly hinder the delivery of medical services to the public. What must be done to acquire the services prior to completion of the background check?

Answer: The Aberdeen Area has developed a "Temporary Waiver of Character Investigation" (for Government contractors only) which can be used while the background investigations is being conducted. Authority for the waiver is cited at 42 U.S.C. Sec. 13041 (b) (3) which provides in part as follows:

"An agency...may hire a staff person provisionally prior to completion of a background check if, at all times prior to receipt of the background check during which children are in the care of the person, the person is within the sight and under the supervision of a staff person with respect to whom a background check has been completed.

VI. Legislative Background:

Congress enacted Public Law 101-630, 25 U.S.C. Section 3201-3211 entitled "Indian Child Protection and Family Violence Prevention Act" to prescribe minimum standards of character for individuals whose duties and responsibilities involve regular contact with, or control over, Indian children. The Act requires minimum standards of character to ensure that no individual hired or awarded a Government contract be allowed to have contact with Indian children if they have been found guilty of, or entered a plea of nolo contendere (no contest) or guilty to, any offense under Federal, State, or tribal law involving crimes of violence, sexual assault, molestation, exploitations, contact or prostitution, or crimes against persons.

Section 408 is a mandatory provision which requires the Indian Health Service to conduct a criminal history background investigation of all contractors performing services in Indian Health Service to conduct a criminal history background investigation of all contractors performing service in IHS facilities prior to providing unmonitored contact with Indian children.

Congress enacted Pubic Law 101-647, 42 U.S.C. Section 13041 which requires all federal agencies, every facility operated by the Federal Government, and every facility operated under contract with the Federal Government to conduct a criminal history background check on newly hired employees and contractors who will be performing services which involve contact with any child under the age of 18 years. This statute also applies to the Indian Health Service as a Federal agency. Subtitle of the law provides as follows:

"(1) any conviction for a sex crime, an offense involving a child victim, or a drug offense shall be grounds for denying employment or for dismissal of an employee engaged in specified child care services;

(2) an incident in which an individual has been charged, but where the charge has not yet been disposed of, shall permit the employee's suspension from any contact with children until the case is resolved; and (3) convictions of other crimes may be considered if they bear on an individuals' fitness to have responsibility for the safety and well-being of children."